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FILED

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**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR
AGENCY ACTION OF AXIA ENERGY,
LLC FOR AN ORDER AUTHORIZING THE
FLARING OF GAS IN EXCESS OF THE
AMOUNTS ALLOWED UNDER UTAH
ADMIN. CODE RULE R649-3-20(1.1)
FROM TWELVE (12) THREE RIVERS
AREA WELLS LOCATED IN SECTIONS 32
AND 36 OF TOWNSHIP 7 SOUTH, RANGE
20 EAST, SLM, AND SECTIONS 3, 8, AND
16 OF TOWNSHIP 8 SOUTH, RANGE 20
EAST, SLM, UINTAH COUNTY, UTAH

**RESPONSE TO
REQUEST FOR AGENCY ACTION**

Docket No. 2014-002

Cause No. 142-10

The Utah Division of Oil, Gas and Mining ("Division"), by and through its attorneys and pursuant to Utah Code § 40-8-6 and Utah Admin. Code R641-105-200, hereby files its Response to Axia Energy, LLC's ("Axia") Request for Agency Action ("RAA").

BACKGROUND

1. In February 2013, Axia came before the Board to request flaring from the Three Rivers #34-31-720 well in Township 7 South, Range 20 East, in the Three Rivers Project Area of Uintah County, Utah. Docket No. 2013-006, Cause No. 142-08.

2. The Board authorized flaring from the well on a limited basis. Specifically, the Board authorized Axia to “flare a total of 24,000 MCF for a period of eight calendar months, or the arithmetic equivalent of 3,000 MCF per month, commencing March 1, 2013, and running through October 31, 2013 without regard to specific daily or monthly volumes.” Findings of Fact, Conclusions of Law, and Order, Docket No. 2013-006, Cause No. 142-08 at 6, ¶ B (filed March 21, 2013) (hereinafter “142-08 Order”). The Board further provided that Axia “must cease flaring at that point that the total gas flared reaches the 24,000 MCF-limit established by this Order. Upon reaching a total of 24,000 MCF gas flared or at the end of the eight-month period, whichever is the earlier, this Order shall expire; and thereafter Axia’s right to flare will again be governed by R649-3-20 of the Utah Administrative Code.” *Id.*
3. The Board further provided that the 142-08 Order “will not be continued or extended[.]” *id.* at 7, ¶ C (filed March 21, 2013), and instructed the Division “to monitor the gas flare rates and production from the Well *and Axia’s Three Rivers Project Area*[.]” *id.* at 7, ¶ F (emphasis added). The Board retained continuing jurisdiction over the matter “and the flaring authorization.” *Id.* at 7, ¶ G.
4. After issuance of the 142-08 Order, Axia continued development in the Three Rivers Project Area. It spud and completed additional wells, and began selling oil and gas from those wells. *See* RAA at 3-4, ¶ 2.
5. From July to November 2013, Axia submitted various Sundries to the Division asking for permission to flare gas from twelve different wells within the Three Rivers Project Area (these are the twelve “Subject Wells” that are listed in the RAA at 1-2) above the limits

allowed under Utah Admin. Code R649-3-20. Before the Sundries were approved, and without asking for Board approval, Axia flared gas in excess of the tolerable limits found in Utah Admin. Code R649-3-20. *See, e.g.*, Exhibit I-16 to RAA (showing flared volume of nearly 8,000 MCF in August 2013 on the Three Rivers #16-23-820 well, which was completed July 3, 2013, *see* RAA at 4, ¶ 2).

6. In November and December 2013, the Division approved temporary flaring from the Subject Wells until January 22, 2013, the next regularly scheduled Board hearing. At that time, Axia represented to the Division that the gas gathering pipeline would be completed by the end of December 2013.
7. On December 10, 2013, Axia filed the instant RAA asking for Board approval to continue to flare in excess of the tolerable limits found in R649-3-20 “until pipeline construction to the Subject Wells is completed or April 1, 2014, whichever occurs first; provided however, that if pipeline completion does not occur by April 1, 2014, and Axia provides prior written notification thereof to the Utah Division of Oil, Gas and Mining (the “Division”), the Division will have the administrative authority to extend such flaring for an additional one month period.” RAA at 2-3.
8. On December 18, 2013, Ultra Resources, Inc. (“Ultra”) replaced Axia as the real party in interest in this Cause. *See* Order Granting Substitution of Ultra Resources, Inc. as Real Party in Interest at 1 (December 18, 2013).

RESPONSE

The Division does not support the RAA in its current form for two reasons. First, the Division does not support flaring authorization to April 1, 2014. Second, the Division does not support the proposed delegation of authority to the Division to grant a flaring extension.

I. Ultra Should Present Evidence to Support Continued Flaring and the Board Should Limit the Time Allowed for Flaring

Axia states that it desires to put the gas into a gathering pipeline, but construction of the gathering pipeline began in “late November and is expected to be completed sometime in March, 2014.” RAA at 6, ¶ 4. Axia must explain why construction of the pipeline will take so long, especially considering that when the Division approved the Sundries attached to Axia’s RAA as Exhibit 1, Axia represented to the Division that construction of the pipeline would be completed by the end of December 2013. Also, Ultra personnel have recently indicated to the Division that the gathering pipeline will likely be completed before the January 22 Board hearing.

Given the extensive number of wells involved, flaring should be granted only in short, not ample, increments, and should be granted only in the manner that is justified by the evidence. According to Exhibit D-2 to the RAA, only 1.7 miles needed to be completed as of December 10. It should be a considerably shorter distance now, and should be completed no later than the time of the Board hearing.¹

In the absence of evidence and testimony establishing a longer period, the Division would support the RAA if it were limited “until pipeline construction to the Subject Wells is completed

¹ The Division understands that there have been obstacles in the past with construction of the pipeline, including the discovery of a sensitive plant species—which has required the gathering pipeline to be buried underground—and the unexpected shutdown of the federal government for an extended period in the end of 2013. However, the Division has not been made aware of any current obstacles, so the Division expects the pipeline to be completed by the January 22 Board hearing.

or February 26, 2014,² whichever occurs first.” Such an order would provide an incentive to complete the pipeline and avoid flaring longer than is necessary. The order could also allow for a short extension to the following Board hearing if construction of the pipeline is not completed by February 26, 2014, provided Ultra again appears before the Board to show why flaring continues to be necessary.

II. Extensions for Flaring Beyond February 26, 2014 Should Be Granted Only by the Board, Not the Division, and Should be Based on Specific Data

In addition to requesting flaring until April 1, 2014, the RAA asks that the Board allow the Division to have administrative authority to approve a one-month extension if “Axia provides prior written notification thereof[.]” RAA at 2-3. The Division does not support this proposed delegation of authority because it believes the Board should retain continuing jurisdiction over the matter, and the determination of whether additional extensions are warranted should be based on specific criteria and data as specified by the Board, rather than mere “written notification.”

In the 142-08 Order, the Board authorized flaring of the Three Rivers #34-31-720 well on a limited basis, and added this: “The Division is to monitor the gas flare rates and production from the Well *and Axia’s Three Rivers Project Area*.” 142-08 Order at 7, ¶ F (emphasis added). The 142-08 Order also provided that “[t]he Board retains continuing jurisdiction of this matter and the flaring authorization.” 142-08 Order at 7, ¶ G. These statements from the Board indicate caution about flaring in the Three Rivers Project Area, and show that the Board was concerned about the Division authorizing additional flaring without Board approval or without the Board’s knowledge. Accordingly, the Division believes that if flaring authorization is granted in this

² February 26, 2014 is the date of the next regularly scheduled Board hearing.


Cause, and the operator desires an extension of that authorization, the Board should be the entity to decide whether to grant such an extension.

While the Board has authority to delegate duties to the Division, such delegation cannot be without limit and should be subject to criteria set by the Board. In this case, due to the failure to meet prior schedules, the Board should retain jurisdiction and not delegate that authority to the Division.

RESPECTUFLLY SUBMITTED this 10 day of January, 2014.

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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the forgoing Response to Request for Agency Action to be electronically mailed the 10 day of January, 2014, to:

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